

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY 26 1992

Federal Communications Commission  
Office of the Secretary

In the Matter of )  
 )  
The Telephone Consumer )  
Protection Act of 1991 )

CC Docket No. 92-90

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Federal Communications Commission  
Office of the Secretary

**Comments**

of

**The Southern New England Telephone Company**

The Southern New England Telephone Company (SNET), pursuant to the Notice of Proposed Rulemaking released April 17, 1992, (NPRM)<sup>1</sup> by the Federal Communications Commission (Commission), hereby respectfully files its comments in the above captioned proceeding.

The Commission's NPRM advances proposed regulations that would restrict the use of automatic telephone dialing systems (auto dialers) and facsimile machines used for telemarketing purposes, as required by the Telephone Consumer Protection Act of 1991 (TCPA).<sup>2</sup> SNET submits that the responsibility for

<sup>1</sup> In the Matter of The Telephone Consumer Protection Act of 1991, CC Docket No. 92-90, Notice of Proposed Rulemaking released April 17, 1992 (FCC 92-176), summarized at 57 Fed. Reg. 18445 (April 30, 1992).

<sup>2</sup> Public Law 102-243, amending Title II of the Communications Act of 1934, 47 U.S.C. Sect. 201 et seq. by adding new Section, 47 U.S.C. Sect. 227.

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accomplishing the goals of the TCPA correctly and fairly rests with the telemarketers, and not with the local exchange carriers (LECs), including SNET.

I. The Local Exchange Carriers Should Not Provide The Means By Which The Commission Enforces The TCPA.

In its proposed regulations, the Commission must balance the privacy concerns of the public and the continued viability of the beneficial and useful business practices of telemarketers, with the need for efficient solutions that minimize costs.<sup>3</sup> Consumers should have the opportunity to protect their privacy and avoid receiving unwanted telephone solicitations, just as the telemarketers should have the ability to operate their businesses.

In this equation, SNET submits that the Commission should not require the LECs to provide the means by which it implements and enforces the TCPA. The LECs provide a reliable and ubiquitous network that carries a wide variety of messages for numerous subscribers for a multitude of business and personal reasons. It would make no sense to turn the LECs into regulation enforcers for a single kind of call (a call produced by automatic dialing systems) to subscribers with one particular interest (those desiring not to receive telephone solicitations).<sup>4</sup> Simply put,

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<sup>3</sup> NPRM, para. 34.

<sup>4</sup> Any regulations imposed on the LECs to perform these functions would be contrary to the Commission's continuing goal "to provide a minimally intrusive regulatory framework to expedite and foster service to the American public." See, Letter dated April 28, 1992 from Alfred C. Sikes, Chairman, Federal Communications Commission to Honorable George Bush, President of the United States, regarding the reduction of burdens of government regulations.

the LECs' networks do not have, and should not have, control over the origin of messages traversing their networks based on content. Moreover, while the LECs' networks may have many advanced capabilities provided by a wide variety of technologies, as explained infra at 5, recognizing and blocking every auto dialer call of all telemarketers to any particular residence subscriber would require expansive technological resources. Lastly, directory marking has the considerable drawback of being effective only during the life of a directory, regardless of the wishes of the customer.

It is important to note that other alternatives, described in the NPRM, do exist to address consumer privacy concerns. SNET would urge that these alternate means, such as telemarketer databases or industry "do not call" lists, provide better, less costly implementation mechanisms.<sup>5</sup> Moreover, these alternatives correctly place the responsibility on telemarketers to provide the means by which the privacy of residential subscribers is not invaded by telephone solicitations.

A good analogy is the postal system. The protections of the TCPA are quite similar to those afforded by the practices of the U.S. Postal Service, which provide that postal patrons not wishing to receive third class bulk mail ("junk mail") can notify the Direct Mail/Marketing Association, Mail Preference Service

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<sup>5</sup> SNET also believes that it would be inappropriate to require the LECs to perform these functions without adequate cost recovery mechanisms. (See TCPA, Section 3(c)(3)(E).) Such a requirement could be interpreted as confiscation.

(the Association), in writing.<sup>6</sup> The Association then adds the patron's name and mailing address to a data base, which a direct mail marketer voluntarily accesses as it prepares its mailing labels and then removes the patron from its mailing list.

This system has worked satisfactorily for many years. The U.S. Postal Service refers patrons to the Association, but performs no screening, identification of patrons, review of the content of the mailing, or any other enforcement functions.<sup>7</sup> The Postal Service regulations state that the mail will be delivered as addressed.<sup>8</sup>

SNET strongly recommends that the Commission determine that the telemarketers themselves should implement the TCPA's requirements to protect consumers from receiving unwanted telephone solicitations.<sup>9</sup>

II. It Is Inappropriate To Use Network Technologies To Screen Out Telemarketing Calls.

The Commission seeks comment on the extent to which "network technologies ... could be utilized to allow callers to screen out

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<sup>6</sup> See U.S. Postal Service Publication No. 27 ("The Answer Book").

<sup>7</sup> The regulations regarding obscene or pornographic material sent through the U.S. mail are covered by separate regulations, which do provide for penalties. See, generally, 39 U.S.C.A. Section 3001, et seq.

<sup>8</sup> 39 C.F.R. Part 3001, Subpart C, Appendix A, Section 1000.020.

<sup>9</sup> SNET would agree to providing an annual bill insert describing telephone subscribers' rights, and refer its subscribers to a telemarketer source or association (i.e., a telephone number or address), should a subscriber inquire how to avoid receiving telephone solicitations.

telephone solicitations."<sup>10</sup> The Commission describes several ways that telephone prefixes, area codes, and central office arrangements could support called parties' ability to recognize and/or block telemarketing calls.

The LECs' networks continue to evolve into a highly reliable and sophisticated infrastructure with a wide array of available products, services and capabilities. The LECs continue to construct the most advanced telecommunications networks in the world, and are making steady progress toward becoming even more efficient in providing affordable and desirable network features.

Nevertheless, SNET believes that there are practical reasons why the LECs' local networks cannot become the universal application by which called parties could screen out telemarketing calls.

The existing network signaling architecture uses both multifrequency (MF) and Signaling System Number 7 (SS7) technologies. As calling parties originate calls over the network, these architectures generate some signaling data about calling parties for transmission to the terminating switching centers (end offices) serving the called parties. When MF is used end-to-end on a call, calling parties' Automatic Number Identification (ANI) information is not transmitted to the destination switch. When SS7 signaling is used end-to-end, calling parties' Charge Number (equivalent to ANI) and Calling Party Number (CPN) data is transmitted to the end office on interLATA calls. CPN is passed from originating office to end

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<sup>10</sup> NPRM, para. 30.

office on intraLATA SS7 calls. When a mix of signaling is used on an interLATA call via a tandem (e.g., MF to the tandem, and SS7 from the tandem to the end office), then only Charge Number information is available at the end office.

The bottom line is that, although current network signaling could provide some screening capabilities in some areas, calling party data is simply not always available at every end office for every called party to screen out auto dialer calls.

Subscribers served by SS7 offices could have finite-sized individual screening lists available to block incoming calls from telephone numbers input by the subscriber.<sup>11</sup> SNET would have to add this screening list capability to its SS7 switches.<sup>12</sup> Further, as SNET is a number of years away from ubiquitous SS7 deployment, many subscribers would not have this feature available for quite some time. It would be one thing if the technology were already in place, but that is not the case. Requiring an LEC to modify its technology deployment program in very expensive ways because of this proceeding does not make sense, particularly in light of many pressures already bearing on LEC capital program budgets, and with new technologies and important new architectures under development. Other more effective implementation methods are immediately available at lower cost.

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<sup>11</sup> However, SNET believes that subscribers are not likely to know the telephone numbers of the lines telemarketers would use to make their solicitations.

<sup>12</sup> SNET has not deployed this feature at this time as it is very expensive, and no economic demand has yet materialized.

Regarding the possible modification of the telephone numbering plan to support a special prefix for telemarketers,<sup>13</sup> SNET believes that such a plan would be very detrimental to the telephone numbering system. A unique national seven digit number assigned to or reserved for the same telemarketer in every area code cannot currently be supported by the North American Numbering Plan (NANP). In the ultimate plan, there will be about 800 area codes. Each Central Office (CO) code or prefix reused in every area code specifically for a telemarketer would take up eight million numbers (800 area codes x 10,000 telephone numbers in each CO code), versus 10,000 numbers lost for nation wide seven digit numbers. This means that every code reserved for nationwide telemarketer assignment would make over seven million numbers unavailable for general use.

The proliferation of such an inefficient scheme to implement the TCPA would cause premature exhaust of the ten digit NANP, a very real abuse of this limited resource. Moreover, premature expansion of the number of digits in the NANP would have extraordinary economic impact, not only on telephone plant and support systems (local and interexchange), but also on every subscriber nationwide due to telephone number changes and increased telecommunications costs and rates.

SNET concludes that, as end offices do not currently have the ubiquitous ability to receive and screen based on ANI, and as unique area codes or CO prefixes for telemarketers could subvert the future of the NANP, the telephone network cannot become the

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<sup>13</sup> NPRM, para. 30.

solution or mechanism by which called residences could screen out auto dialer calls.

III. The Commission Should Clarify Several Technical and Procedural Standards.

The Commission proposes an amendment to Section 68 regarding identification of the sender of a facsimile message. The proposed rule states that it would be unlawful to use a computer or other electronic device to send any message via a telephone facsimile machine unless the message is clearly marked with the date and time, identification of the business or individual, and the telephone number of the sending machine.<sup>14</sup>

While SNET supports this proposal, SNET recommends that the Commission clarify that "sender" means the originator of the facsimile message.

SNET operates a nonregulated activity, SNET FaxWorks, a network based facsimile service bureau. It offers advanced store-and-forward and broadcast features to subscribers who use their own facsimile machines. SNET FaxWorks simply stores, routes, distributes and forwards an existing message already sent by an originator. SNET FaxWorks cannot and should not monitor the content of any message originated by a sender subscriber, whether to determine if the TCPA's required marking has been added, or for any other reason. If the Commission's rules should ever be interpreted to mean that the term "sender" includes such service bureaus, SNET FaxWorks and other bureaus would be required to ensure that the originator append the header, and would be put in

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<sup>14</sup> Section 68.318(c)(4). See also NPRM, para. 20.

the position of policing document content, at added cost. Such policing would violate the fundamental tenant of secrecy of communications.

SNET thus recommends that the Commission clarify that a service bureau such as SNET FaxWorks is not the "sender" of a facsimile message in the meaning of the TCPA, and that it is the message originator who has the responsibility for complying with proposed Section 68.318(c)(4), once the Commission adopts it.

The Commission further inquires whether auto dialers have the technical capacity to avoid calling prohibited telephone numbers.<sup>15</sup> SNET makes no evaluation regarding capabilities of currently manufactured auto dialers. However, SNET recommends that auto dialers, as telephone equipment interconnected to the network, should comply with the registration requirements of Part 68 of the Commission's Rules. Should manufacturers design auto dialers with new capabilities, the Commission should clarify that those devices must comply with the Commission's registration rules, in order to protect the network and the services it provides to its users.<sup>16</sup>

IV. SNET Will Assist In Assuring That Emergency Lines Not Receive Auto Dialer Solicitations.

The Commission's proposed rules would prohibit calls using auto dialers to be initiated to any emergency line, "including any 911 line ..."<sup>17</sup> SNET fully supports this proposal. Otherwise,

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<sup>15</sup> NPRM, para. 8.

<sup>16</sup> See, 47 C.F.R. Sect. 68.1.

emergency calls to 911, which could be blocked by auto dialer calls, might not be completed, and the health and safety of the general public could be compromised.

SNET translates incoming 911 calls to unlisted internally assigned seven-digit local numbers to route these calls through the network to the respective municipal emergency headquarters. It is possible that some random number auto dialers could generate these local numbers, initiating an auto dialer call to an emergency line.

To prevent this from happening, SNET will provide to the telemarketer-maintained databases and/or "do not call" lists those telephone numbers that SNET has arranged for its processing of emergency calls.<sup>18</sup>

V. Conclusion.

SNET supports the goals of the Commission in seeking to protect the privacy of telephone subscribers. In implementing the TCPA, however, SNET submits that LECs should not be the means by which the TCPA is implemented. LEC networks are not designed to identify calling party information for use in blocking

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<sup>17</sup> Sect. 64.1100(a)(1)(i). See also, NPRM, para. 19.

<sup>18</sup> SNET believes that the TCPA is best implemented with telemarketer-maintained databases and/or "do not call" lists. See Section I., above.

telemarketing solicitations. The responsibility for accomplishing the goals of the TCPA correctly and fairly rests with the telemarketers themselves.

Respectfully submitted,

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